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IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 31A01-0512-CR-559
	)	
JACQUELINE EDWARDS,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE HARRISON SUPERIOR COURT
The Honorable H. Lloyd Whitis, Special Judge
Cause No. 31D01-0508-FB-709

August 31, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

The State appeals from the trial court's order dismissing five charges against Jacqueline Edwards. We reverse in part and affirm in part.

Issue

We restate the issue as whether the trial court erred in determining that the charges did not state the offenses with sufficient certainty.

Facts and Procedural History

According to the police report filed in this case, Indiana State Police officers went to Edwards's home in response to a complaint about methamphetamine use in her home. The officers received verbal and written consent to search the home. Edwards was at home with her minor son, C.J.E. John Childress, Cindy Trulock, and Lindsey Trulock were also present. Her husband apparently fled soon after the officers arrived. Edwards, Cindy, and John all admitted to the police that they had been smoking methamphetamine that morning. The police found a "reaction vessel" in the garage. Appellant's App. at 19. The police report enumerated several other items that are indicative of a methamphetamine lab. In the kitchen, they found a metal case containing drug paraphernalia, digital scales, aluminum foil with burn residue, and plastic bags of white powder. In the kitchen cabinets, the police found a bag of methamphetamine weighing over three grams and a glass smoking device.

Edwards was arrested and charged with count I, possession of methamphetamine as a class C felony; count II, neglect of a dependent as a class D felony; count III, possession of two or more chemical reagents or precursors with intent to manufacture as a class D felony; count IV, possession of paraphernalia as a class A misdemeanor; count V, maintaining a

common nuisance as a class D felony; count VI, dealing in methamphetamine as a class B felony; count VII possession of a controlled substance as a class D felony; and count VIII, possession or use of a legend drug as a class D felony. Edwards moved to dismiss counts I through VI. On November 23, 2005, the trial court granted Edwards's motion as to counts I, II, IV, V, and VI, finding that they were vague and did not state the offenses with sufficient certainty.

Discussion and Decision

The State asserts that the trial court erred in finding that the dismissed charges did not state the offenses with sufficient certainty. The Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution guarantee criminal defendants the right to know the nature and cause of the accusations against them. Indiana Code Section 35-34-1-2 requires that an information set forth "the nature and elements of the offense charged" and include "the essential facts constituting the offense charged." An information must be dismissed if it "does not state the offense with sufficient certainty." Ind. Code § 35-34-1-4(a)(4). "Clear notice serves the dual purposes of allowing an accused to prepare his defense and of protecting him from being placed twice in jeopardy for the same offense." *Wright v. State*, 658 N.E.2d 563, 565 (Ind. 1995). The State may use alternative language in the charges it files. *Brown v. State*, 239 Ind. 358, 368, 157 N.E.2d 174, 178 (1959). When the trial court rules on a motion to dismiss a charge, the facts alleged in the charge are to be taken as true. *State v. Bilbrey*, 743 N.E.2d 796, 798 (Ind. Ct. App. 2001). This issue is a matter of law, and we review the trial court's decision *de novo*. *State v. Sagalovsky*, 836 N.E.2d 260, 263 (Ind. Ct. App. 2005), *trans. denied*.

Count I: Possession of Methamphetamine

The State asserts that the charge for count I, possession of methamphetamine, was sufficient. Edwards was charged as follows:

> [O]n or about the 11th day of August, 2005, in Harrison County, State of Indiana, one JACQUELINE DESHAN EDWARDS, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, did knowingly or intentionally possess methamphetamine (pure or adulterated) and that the amount of the methamphetamine involved weighed three (3) grams or more, to-wit: After receiving consent to search the home the defendant owned and/or occupied, police found three grams or more of methamphetamine in [a] kitchen cabinet….

Appellant's App. at 7. This charge tracks the language of Indiana Code Section 35-48-4-6 and lays out all the elements of possession of methamphetamine.[1] The charge includes the facts upon which the charge is based. It states that methamphetamine was found, when it was found, how much was found, and where it was found. These facts are sufficient to enable Edwards to prepare her defense and protect her against double jeopardy.

Edwards argues that the charge is insufficient because it merely alleges that methamphetamine was found on her property, and that fact in and of itself does not establish the offense of possession of methamphetamine. It is true that the State must prove that

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[1] As of the time of the alleged offense, Indiana Code Section 35-48-4-6 stated in relevant part:

> (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated), a narcotic drug (pure or adulterated) classified in schedule I or II, or methamphetamine (pure or adulterated) commits possession of cocaine, a narcotic drug, or methamphetamine, a Class D felony, except as provided in subsection (b).
>
> (b) The offense is:
>
> (1) a Class C felony if:
>
> (A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more ….

Edwards possessed the drugs knowingly or intentionally. Ind. Code § 35-48-4-6. However, that is alleged in the charge. Edwards is free to argue at trial that she did not possess the drugs knowingly or intentionally, and it is difficult to see how additional allegations would help her prepare that defense. Therefore, we find that count I is sufficient.

Count II: Neglect of a Dependent

The State asserts that the charge for count II, neglect of a dependent, was sufficient. Edwards was charged as follows:

> [O]n or about the 11th day of August, 2005, in Harrison County, State of Indiana, one JACQUELINE DESHAN EDWARDS having the care of [C.J.E.], who was born August 10, 2003, a dependent, whether assumed voluntarily or because of a legal obligation, did knowingly or intentionally place said dependent in a situation that endangered the dependent's life or health, to-wit: JACQUELINE DESHAN EDWARDS smoked methamphetamine or allowed others to smoke methamphetamine in a home the child occupied and/or had paraphernalia and/or methamphetamine within the child's reach ….

Appellant's App. at 8. This charge tracks the language of Indiana Code Section 35-46-1-4 and lays out all the elements of the offense.[2] The charge clearly identifies the child allegedly placed in danger. Furthermore, it alleges that the child was endangered by exposure to methamphetamine, methamphetamine smoke, or drug paraphernalia. The information contained in the charge allows Edwards to prepare a defense and protects her against double jeopardy.

Edwards argues that the alleged facts do not establish an offense because there is no allegation that she actively "placed" her son anywhere dangerous. Edwards cites *Ricketts v. State*, 598 N.E.2d 597, 600-01 (Ind. Ct. App. 1992), in which we stated:

> The verb "place" commonly is used to describe the conduct of putting something in a particular position . . . . [T]he offense, defined as knowingly or intentionally placing a dependent in a situation that endangers the dependent's life or health, is the actor's knowing or intentional conduct of putting a dependent in a situation where the dependent's life or health is at risk or endangered.

In *Ricketts*, we reversed a conviction for neglect of a dependent based on placing the child in danger because the child was allegedly malnutritioned, and that had nothing to do with the child's location or environment. In Edwards's case, however, the State has alleged that she caused her son to live in a home that was unsafe due to the presence of methamphetamine, methamphetamine smoke, or drug paraphernalia. The State need not allege that Edwards picked up her son and actively set him down near any of these hazards. As a parent, Edwards may control where her son lives as well as the conditions of that home. If she chooses to have him live in a particular place, then it can be said within the meaning of the statute that she placed him there.

Edwards furthermore argues that based on the language of the charge, the State could seek to prove that a "single puff" or a "single rolling paper" is a danger to the child, and that

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[2] Indiana Code Section 35-46-1-4 states in relevant part:

> (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:
>
> (1) places the dependent in a situation that endangers the dependent's life or health …
>
> commits neglect of a dependent, a Class D felony.

such facts are simply insufficient to establish neglect of a dependent. Appellee's Br. at 10-11. However, the State's evidence is not so negligible as to warrant dismissal of the charge. The police report accompanying the information stated that three people admitted to smoking methamphetamine that morning. The police found over three grams of methamphetamine in the house, as well as numerous items used to produce or use methamphetamine. Edwards may argue at trial that these conditions did not exist or that they were not sufficient to endanger the child. However, at this point, the alleged facts must be considered true, and the charge should not have been dismissed.

Count IV: Possession of Paraphernalia

The State asserts that count IV, possession of paraphernalia, was sufficient. Edwards was charged as follows:

> [O]n or about the 11th day of August, 2005, in Harrison County, State of Indiana, one JACQUELINE DESHAN EDWARDS did knowingly or intentionally possess a raw material, an instrument, a device, or other object that she intended to use for introducing into [her] body a controlled substance, and/or enhancing the effect of a controlled substance, to-wit: The Defendant used a methamphetamine smoking device to smoke methamphetamine, and/or police found a box containing altered straws and/or tin foil with burnt residue on it on a counter in the defendant's home and/or a glass smoking device (water bong) in the home the defendant occupied and/or owned ….

Appellant's App. at 10. This charge tracks the language of Indiana Code 35-48-4-8.3 and lays out all the elements of the offense.[3] Edwards cites *Moran v. State*, 477 N.E.2d 100, 104 (Ind. Ct. App. 1985), in which we held that a charge which left the defendant to speculate as to which aspect of the statute he was charged with violating lacked the required specificity. Indiana Code Section 35-48-4-8.3 clearly encompasses a number of factual scenarios. However, Edwards has not been left to speculate as to which part of the statute she violated. The charge clearly indicates that the State seeks to prove that she possessed a glass device, straws, or tin foil that were used to smoke drugs. Once again, it is difficult to see how additional facts are needed to help her prepare her defense or protect her against double jeopardy.

Count V: Maintaining a Common Nuisance

The State asserts that count V, maintaining a common nuisance, is sufficient. Edwards was charged as follows:

> [O]n or about the 11th day of August, 2005, in Harrison County, State of Indiana, one JACQUELINE DESHAN EDWARDS did knowingly or intentionally maintain a building, structure, vehicle, or other place that was used one (1) or more times by persons to unlawfully use a controlled substance or for unlawfully manufacturing and/or keeping of a controlled substance or items of drug paraphernalia, to-wit: Police found a "working meth lab" on the property the defendant owned and/or occupied, the defendant told police she

[3] Indiana Code Section 35-48-4-8.3 reads in relevant part:

> (a) A person who possesses a raw material, an instrument, a device, or other object that the person intends to use for:
> (1) introducing into the person's body a controlled substance;
> (2) testing the strength, effectiveness, or purity of a controlled substance; or
> (3) enhancing the effect of a controlled substance;
> in violation of this chapter commits a Class A infraction for possessing paraphernalia.
> (b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor.

> smoked methamphetamine in the home she owns and/or occupied and/or the defendant possessed methamphetamine in the home and/or on the property she owns and/or occupied ….

Appellant's App. at 11. The charge tracks the language of Indiana Code Section 35-48-4-13 and lays out all the elements of the offense.[4] Edwards also claims that this charge is insufficient under *Moran*. Once again, the statute encompasses a broad range of activity. However, the State has narrowed it down by alleging three specific ways in which her home met the definition of a common nuisance. Edwards does not need additional facts to prepare her defense or protect her against double jeopardy, and therefore, the charge should not have been dismissed.

Count VI: Dealing in Methamphetamine

The State asserts that count VI, dealing in methamphetamine, is sufficient. Edwards was charged as follows:

> [O]n or about the 11th day of August, 2005, in Harrison County, State of Indiana, one JACQUELINE DESHAN EDWARDS, did knowingly or intentionally manufacture methamphetamine, pure or adulterated, classified in Schedule II, to-wit: Police found a working meth lab in the garage the defendant had control over ….

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[4] Indiana Code Section 35-48-4-13 states in relevant part:

> (b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:
> (1) by persons to unlawfully use controlled substances; or
> (2) for unlawfully:
> (A) manufacturing;
> (B) keeping;
> (C) offering for sale;
> (D) selling;
> (E) delivering; or
> (F) financing the delivery of;
> controlled substances, or items of drug paraphernalia as described in IC 35-48-4-8.5;
> commits maintaining a common nuisance, a Class D felony.

Appellant's App. at 12. The charge alleges that Edwards knowingly or intentionally manufactured methamphetamine. Manufacturing is one basis for being found guilty of dealing in methamphetamine. Ind. Code § 35-48-4-1.[5] However, the factual allegations in the charge do not constitute manufacturing. "Manufacturing" is defined as:

> (1) the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. It does not include the preparation, compounding, packaging, or labeling of a controlled substance:
>
> (A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
>
> (B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
>
> (2) the organizing or supervising of an activity described in subdivision (1).

Ind. Code § 35-48-1-18. The State has not alleged that Edwards was engaged in any of these

[5] As of the time of the alleged offense, Indiana Code Section 35-48-4-1 stated in relevant part:

> (a) A person who:
> (1) knowingly or intentionally:
> (A) manufactures;
> (B) finances the manufacture of;
> (C) delivers; or
> (D) finances the delivery of;
> cocaine, a narcotic drug, or methamphetamine, pure or adulterated, classified in schedule I or II; or
> (2) possesses, with intent to:
> (A) manufacture;
> (B) finance the manufacture of;
> (C) deliver; or
> (D) finance the delivery of;
> cocaine, a narcotic drug, or methamphetamine, pure or adulterated, classified in schedule I or II;

activities that constitute manufacturing. Mere knowledge of the presence of a "meth lab," without more, does not constitute manufacturing. Therefore, count VI should be dismissed.

In conclusion, charges I, II, IV, and V contain the elements of the offense and the facts supporting the charges. The facts alleged in each charge give Edwards sufficient notice to begin formulating her defense and are specific enough to protect her against double jeopardy. Therefore, we reverse the trial court's order dismissing these counts. However, count VI does not allege sufficient facts to support the offense of dealing in methamphetamine. Therefore, we affirm the trial court's order as to count VI.

Reversed in part and affirmed in part.

KIRSCH, C. J., and BAILEY, J., concur.

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commits dealing in cocaine, a narcotic drug, or methamphetamine, a Class B felony, except as provided in subsection (b).